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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/829,007 | 04/10/2001 | Jeanette D. Rasche | EAMC00-09 01 | 9567 |

27370 7590 03/09/2004

OFFICE OF THE STAFF JUDGE ADVOCATE
U.S. ARMY MEDICAL RESEARCH AND MATERIEL COMMAND
ATTN: MCMR-JA (MS. ELIZABETH ARWINE)
504 SCOTT STREET
FORT DETRICK, MD 21702-5012

EXAMINER

SOTOMAYOR, JOHN

ART UNIT PAPER NUMBER

3714

DATE MAILED: 03/09/2004

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/829,007

Applicant(s)

RASCHE ET AL.

Examiner

John L Sotomayor

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

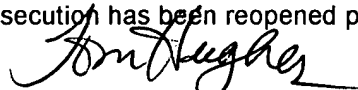
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☒ other: See Continuation Sheet

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.


S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of 3. (d) Other: The appeal brief filed on 12/18/03 did not correct the deficiencies set forth in the previous "Notice of Non-Compliance with 37 CFR 1.192(c)" mailed 11/28/03. Specifically, the grouping of the claims is still deemed to be defective. For example, appellant states that "the claims of group 2 stand or fall together", yet goes on to also state that "group 2 claims 9 and 19 are separately patentable over each other". This discrepancy alone renders the brief defective. The examiner is not sure if the claims in this group stand or fall together. Further, if it is appellant's opinion that the claims "do not stand or fall together", then the brief is defective because it fails to set forth the positive statement by appellants to that effect required by 37 CFR 1.192(c)(7). In addition, if it is appellant's opinion that the claims do stand or fall together, then the brief is defective because the brief contains arguments in support of separate patentability. Since the brief of 12/18/03 is considered by this examiner to be "an amended brief that does not overcome all of the reasons for non-compliance of which the appellant was notified", then the appeal stands dismissed. See 37 CFR 1.192(c) and MPEP 1206. Since the appeal stands dismissed and there are no allowed claims, the application stands ABANDONED.